

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL : CIVIL ACTION NO. 05-5368
AUTOMOBILE INSURANCE :
COMPANY, et al, :
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Plaintiffs :
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v : Excerpt of Plaintiffs'
 : Rebuttal Argument:
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ARNOLD LINCOLN, D.O., :
et al., : Philadelphia, Pennsylvania
 : March 24, 2009
Defendants : 12:33 a.m.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE EDUARDO ROBRENO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: CY GOLDBERG, ESQUIRE
RICHARD M. CASTAGNA, ESQUIRE
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For Defendants JOEL W. TODD, ESQUIRE
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1 (The following is defendants' rebuttal
2 argument heard in the above-captioned matter at 12:33
3 a.m.)

4 THE COURT: Now, there will be a brief
5 rebuttal by Mr. Goldberg.

6 MR. GOLDBERG: Mr. Todd and I have a
7 different approach to certain things I guess. I mean,
8 when Mr. Todd says that radiologists, five radiologists
9 took the stand and said whatever I wanted to hear, you
10 know, I take that as him saying to them that they lied,
11 you know. They are under oath, and that's what he
12 says.

13 When he says that Mr. Carter came on the
14 stand and had an agenda, you know, I mean I take that
15 for -- you know, to my -- what (inaudible), I think
16 that you are saying that the person lied.

17 Now, when he says that Sue Fellman took the
18 stand, you know, it seems to me that she took the stand
19 to say that Belinda Dickens was never the office
20 manager, knowing that she had given a deposition a
21 couple of years before where under oath she said that
22 she was.

23 So, I understand what I said, I know it is
24 strong language, but I am going to stand by what I said
25 because I think that that is what they have done

Plaintiffs' Rebuttal Argument

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1 throughout the whole case here, is basically call
2 anybody that basically disagreed with them a liar
3 through one form or another.

4 Dolly Lowe, well, let me just propose one
5 thing to you with Dolly Lowe. In August of 2006 Dr.
6 Lincow was deposed, and when I asked him about
7 conversations with radiologists about changing reports
8 three times, he said it never happened, never happened.
9 He didn't say sometimes with consent or anything like
10 that.

11 Now, Dolly Lowe when she was deposed, that's
12 already in 2007 when now the radiologists have
13 testified. So, whatever Dolly Lowe said, Dr. Lincow
14 didn't remember back in August of 2006 or he did, but
15 he didn't want to tell me then, but was forced to do
16 that back in 2007.

17 When you look at Butow and Hennessy, let me
18 tell you what I think about Butow and Hennessy. It's
19 not the fact that chiropractors can or can't delegate
20 to unlicensed personnel.

21 It's about that chiropractors are not
22 supposed to fabricate notes in other doctors names and
23 sign them as if a doctor was there when they never
24 were.

25 They are not supposed to document treatment,

Plaintiffs' Rebuttal Argument

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1 (inaudible) that wasn't given. When he says as Mr.
2 Todd pointed out that there is nothing wrong with it
3 according to the statute, what it is interesting, not
4 that it is a big point, other than the fact that when
5 they originally were asked in sworn interrogatories
6 whether they ever delegated to unlicensed personnel,
7 and I showed it to you, three times they submitted
8 affidavits saying they never did it. Now, I guess Mr.
9 Todd has some explanation for that, but I don't know
10 what it is.

11 Now, with regard to what I know, here is what
12 I -- and what we knew, here is what I propose to you.
13 Mr. Todd wasn't a witness in this case, he didn't
14 testify on the stand.

15 When it came to the counterclaim he didn't
16 testify on the stand. Actually everything he said to
17 you about these claims that are withdrawn from my
18 perspective is completely inconsistent with the
19 discovery in this case.

20 Jeff Lincow told you, he was the only witness
21 that they had, he told you why those claims were
22 withdrawn, not the story that you just got from Mr.
23 Todd. They were withdrawn because they didn't have the
24 records to give us.

25 Now, the last thing I guess was explained, so

Plaintiffs' Rebuttal Argument

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1 I am going to make a (inaudible) of that analogy. A
2 robber goes in and he robs a bank, he gets away with it
3 for five years and then he gets caught.

4 So, as a remedy for the robber, I'll tell you
5 what, I robbed ten banks, you got me on one, let me
6 just give you back the money, right. You caught me,
7 I'll give you back the money, we're done, you got your
8 money back.

9 Well, I say that this case is a little bit
10 more than that. I think what we are trying to tell
11 these robbers is hey, you are not allowed to rob and I
12 am going to punish you so that you or anybody else that
13 wants to do this will never do that again. You are
14 just not going to be able to give us the money back
15 because we caught you.

16 These third party claims, let me tell you
17 about the third party claims. Someone -- like anybody
18 in this room was sued and they weren't sued for
19 property damage, they weren't sued for anything other
20 than injuries based on those records.

21 That's why the claims were defended, that's
22 why lawyers were necessary. That is why they had to
23 take off from work to go to the depositions. That is
24 why they had to take off from work to go to
25 arbitrations.

Plaintiffs' Rebuttal Argument

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1 That's why they had to sit in chairs like
2 this as defendants in a case and worry that maybe the
3 verdict will come in for more than what their insurance
4 is, and they might be personally responsible.

5 So, I want you to imagine, although Mr. Todd
6 I guess can't, sitting in this seat right here and
7 realizing that if you believe these records, you could
8 lose your house, your life savings. How would that
9 feel?

10 Now, when he says the lawyers didn't get
11 anything, there is no evidence of the lawyers getting
12 anything, well here is what I say. If I am a lawyer
13 and I am going into court and I know I'm getting paid
14 from the settlement, I want to have the best damages I
15 can get.

16 I want to tell you when you look at these
17 reports you got it. Every one has a herniation; every
18 one of them has a positive EMG. Oh, they got exactly
19 what they wanted.

20 They got these reports to use against people
21 that are sitting in these chairs, sitting here,
22 sweating hands, worrying that if a jury were to believe
23 it, who knows what they could lose. Thank you very
24 much.

25 THE COURT: Thank you, counsel, for your

1 closing statements.

2 (The plaintiffs' rebuttal argument concluded
3 at 12:39 p.m.)

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I N D E X

PLAINTIFFS' REBUTTAL STATEMENT PAGE NUMBER

By Mr. Goldberg 3

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CERTIFICATION

I, Donna M. Anders, do hereby certify that
the foregoing is a true and correct transcript from the
electronic sound recordings of the proceedings in the
above-captioned matter.

Date

3-10-09

Donna M. Anders

Donna M. Anders